

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KAREN G. D'ONOFRIO
Plaintiff,

v.

VACATION PUBLICATIONS, INC.
Defendant.

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CIVIL ACTION NO. 15-753

DEFENDANT VACATION PUBLICATIONS, INC.'S, NOTICE OF REMOVAL

TO: The United States District Court for the Southern
District of Texas, Houston Division

Defendant Vacation Publications, Inc. (VTG), files this Notice of Removal of this case to the United States District Court for the Southern District of Texas, Houston Division, from the 405th Judicial District Court of Galveston County, Texas, where it is now pending, as provided by Title 28, U.S. Code, Chapter 89, and states:

1. This case was commenced in the 405th Judicial District Court of Galveston County, Texas, and is now pending in that court. Plaintiff's Original Petition and Request for Disclosure (the "Petition"), a copy of which is attached as Exhibit A was first received by VTG on March 3, 2015. The thirty (30) days has not elapsed within which VTG is allowed to file this Notice of Removal to this Court under 28 U.S.C.A. § 1446(b).
2. This case is a civil action in which Plaintiff appeals from a final decision of the Texas Workforce Commission (the "TWC") pursuant to Tex. Labor Code Ann. § 212.201, and asserts a claim against VTG for violation of the Family Medical Leave Act (the "FMLA") pursuant to 29 U.S.C. § 2601.
3. Plaintiff's FMLA claim against VTG is a separate and independent claim of which this Court has original jurisdiction under 28 U.S.C.A., § 1331. Additionally, the Petition makes clear that the FMLA claim against VTG arises under the laws of the United States by virtue of and under the federal statutes and acts of Congress.
4. This FMLA claim is separate and independent of all the other claims asserted by Plaintiff in this case and therefore, pursuant to 28 U.S.C.A. § 1441(c), the entire case is removable.
5. The TWC does not join in this Notice of Removal because it is an agency of The State of Texas and contends that it cannot be sued in federal court because of

Eleventh Amendment immunity. *Daigle v. Gulf State Utils. Co.*, 794 F.2d 974, 980 (5th Cir. 1986). This Court is, accordingly, respectfully requested, pursuant to 28 U.S.C.A. § 1441(c)(2), to remand to state court Plaintiff's claims against TWC for unemployment benefits.

6. In addition to the Petition, VTG has been served with *Original Answer of Defendant Texas Workforce Commission*, and *Texas Workforce Commission's Motion to Sever*, copies of which are attached as Exhibits B and C, respectively. VTG has filed Defendant's Motion to Transfer Venue, Original Answer, and Counterclaim, a copy of which is attached as Exhibit D. All of the pleadings filed in this case are attached as exhibits for this Court's clerk.
7. VTG will give written notice of the filing of this Notice of Removal as required by 28 U.S.C.A § 1446(d). A copy of the form of the notice with proof of service of it is attached as Exhibit E.
8. A copy of this Notice of Removal will also be filed with the clerk of the 405th Judicial District Court of Galveston County, Texas, as required by 28 U.S.C.A. § 1446(d).

WHEREFORE, VTG hereby removes this case pending in the 405th Judicial District Court of Galveston County, Texas, to this Honorable Court.

Respectfully submitted,

MICHAEL JAY KUPER
A Professional Corporation

By: /s/ Michael Jay Kuper

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